

August 11, 2005

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2005-09 is available for public comments under this procedure. It was requested by counsel, Marc E. Elias, Esq. on behalf of Friends of Chris Dodd 2004.

Proposed Advisory Opinion 2005-09 is scheduled to be on the Commission's agenda for its public meeting of Thursday, August 18, 2005.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (Eastern Time) on August 17, 2005.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2005-09, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 11, 2005

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Associate General Counsel

Brad C. Deutsch
Assistant General Counsel

Cheryl A.F. Hemsley
Attorney

Stacey Shin
Legal Intern

Marianne Hogan
Legal Intern

Subject: Draft AO 2005-09

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for August 18, 2005.

Attachment

1 ADVISORY OPINION 2005-09

2
3 Marc E. Elias, Esq.
4 Perkins Coie LLP
5 607 14th Street, N.W.
6 Washington, D.C. 20005-2011

DRAFT

7
8 Dear Mr. Elias:

9 We are responding to your advisory opinion request on behalf of Friends of Chris Dodd
10 2004 (“the Committee”) regarding whether, under the Federal Election Campaign Act of 1971,
11 as amended (“the Act”), and Commission regulations, the Committee may use campaign funds
12 to pay for certain travel expenses of Senator Dodd’s minor children.

13 The Commission concludes that the Committee may use campaign funds to defray the
14 costs of travel by Senator Dodd’s minor children to accompany their parents between their
15 home in Connecticut and Washington, D.C., provided that the parents are traveling to participate
16 in a function directly connected to the Senator’s *bona fide* official responsibilities.

17 ***Background***

18 The facts of this request are presented in your letter received on June 27, 2005 and in
19 your e-mail communication received on July 15, 2005.

20 Senator Dodd is a United States Senator from Connecticut. His principal campaign
21 committee is Friends of Chris Dodd 2004.

22 Senator Dodd travels regularly between his home in Connecticut and Washington, D.C.
23 in connection with his official duties, and his travel expenses are paid for in accordance with
24 Senate rules and Commission regulations. Senator Dodd’s wife travels from their home in
25 Connecticut to participate in events taking place in Washington, D.C. relating to Senator Dodd’s
26 official duties, “such as fact-finding events, speaking engagements, and constituent meetings.”

1 Senator Dodd and his wife have two daughters: one is three years old, and the other is
2 an infant. Due to the daughters' young ages, they accompany Senator Dodd and his wife when
3 both parents travel between Connecticut and Washington, D.C.

4 ***Question Presented***

5 *May Friends of Chris Dodd 2004 use campaign funds to pay for the travel expenses of*
6 *Senator Dodd's minor children when the purpose of the travel is to attend officially connected*
7 *events?*

8 ***Legal Analysis and Conclusion***

9 Yes, the Committee may use campaign funds to pay for the travel expenses of Senator
10 Dodd's minor children to accompany the Senator and his wife when the purpose of the travel is
11 to attend or participate in events officially connected to Senator Dodd's status as a Federal
12 officeholder.

13 The Act identifies six categories of permissible uses of contributions accepted by a
14 Federal candidate. They are (1) otherwise authorized expenditures in connection with the
15 candidate's campaign for Federal office; (2) ordinary and necessary expenses incurred in
16 connection with the duties of the individual as a holder of Federal office; (3) contributions to
17 organizations described in 26 U.S.C. 170(c); (4) transfers, without limitation, to national, State
18 or local political party committees; (5) donations to State and local candidates subject to the
19 provisions of State law; and (6) any other lawful purpose not prohibited by 2 U.S.C. 439a(b).
20 *See 2 U.S.C. 439a(a); see also 11 CFR 113.2(a)-(c).*

21 Contributions accepted by a candidate may not, however, be converted to "personal use"
22 by any person. 2 U.S.C. 439a(b)(1); 11 CFR 113.2. Commission regulations define "personal
23 use" as "any use of funds in a campaign account of a present or former candidate to fulfill a

1 commitment, obligation or expense of any person that would exist irrespective of the
2 candidate's campaign or duties as a Federal officeholder." 11 CFR 113.1(g);
3 *see also* 2 U.S.C. 439a(b)(2).

4 The Act and Commission regulations list a number of expense categories that would
5 constitute personal use, such as household food items or supplies, clothing, tuition payments,
6 home mortgage, rent, and utility payments. *See* 2 U.S.C. 439a(b)(2); 11 CFR 113.1(g)(1)(i).
7 The list does not include travel expenses. The Commission considers on a case-by-case basis
8 whether specific, unlisted uses constitute "personal use." *See* 11 CFR 113.1(g)(1)(ii).
9 Accordingly, the Commission analyzes the payment of travel expenses, including subsistence
10 expenses incurred during travel, on a case-by-case basis under 11 CFR 113.1(g)(1)(ii)(C).

11 Commission regulations further specify that certain travel costs qualify as "ordinary and
12 necessary expenses incurred in connection with" one's duties as a Federal officeholder.
13 11 CFR 113.2(a), (a)(1). These expenses specifically include the costs of travel for a Federal
14 officeholder and an accompanying spouse to participate in a function directly connected to *bona*
15 *fide* official responsibilities, such as a fact-finding meeting or an event at which the
16 officeholder's services are provided through a speech or appearance in an official capacity. 11
17 CFR 113.2(a)(1). In explaining the application of the travel cost provision, the Commission
18 recognized "that an officeholder's spouse is often expected to attend these functions with the
19 officeholder." Explanation and Justification, Final Rules on Personal Use of Campaign Funds,
20 60 Fed. Reg. 7,862, 7,872 (1995). The Commission noted that the spouse's attendance alone
21 constitutes a form of participation in the function. *Id.*

22 Section 113.2(a) of the Commission's regulations does not specifically include the costs
23 of travel for accompanying children. The facts in this case, however, are similar to those in

1 Advisory Opinion 1995-20. In Advisory Opinion 1995-20, a Federal candidate and his wife,
2 who served as the candidate's senior campaign advisor, traveled to their home district for
3 campaign events. Because of their ages, the candidate's minor children accompanied the
4 candidate and his wife on their travels, even though the children themselves participated only
5 occasionally in campaign events. The Commission specifically approved the use of campaign
6 funds to pay for the travel expenses of the Federal candidate's minor children, finding that the
7 expenditure was required only because of the candidate's campaign. The Commission
8 concluded that the expenditure was for travel in connection with a campaign for Federal office,
9 in that it was to the Congressman's home district in order for him and his wife to participate in
10 campaign events.

11 Similarly, here, Senator Dodd and his wife travel between their home in Connecticut and
12 Washington, D.C. to participate in functions directly related to Senator Dodd's *bona fide* official
13 responsibilities as a holder of Federal office. When Senator Dodd's minor children accompany
14 him and his wife on these trips, the costs of the children's travel arise from Senator Dodd's
15 duties as a Federal officeholder. Such travel is to be contrasted, for example, with family travel
16 to vacation locales, or other examples of personal uses of campaign funds.

17 For these reasons, the Commission concludes that the Committee may use campaign
18 funds to defray the costs of travel by Senator Dodd's minor children to accompany their parents
19 between their home in Connecticut and Washington, D.C., provided that the parents are
20 traveling to participate in a function directly connected to the Senator's *bona fide* official
21 responsibilities.

